IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 8572 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMANBHAI FAKIRBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 8572 of 2002

MR RS SANJANWALA for Petitioner No. 1

Mr M A Bukhari, APP for Respondent No. 1

RULE SERVED for Respondent No. 2-3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 15/01/2003

JUDGEMENT

This is a petition under section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') for quashing and setting aside an FIR being C.R. No.287/2000 filed before Valsad City Police Station in Valsad District which has been resulted in charge-sheet No.221 of 2000 dated 10.12.2000.

2. The said FIR has been placed on record at page 16 onwards. There, the informant is one Dhansukhlal Bhagalal Patel of Killa Pardi, Valsad District. The said FIR has been filed against one Suryakant Tailor as accused No.1 and the present petitioner as accused no.2. The said FIR has been filed on 24.8.2000.

3. The allegations made in the said FIR are to the effect that the said informant-Dhansukhlal Patel is a British National and he has been staying in India under extended permission right from 1989. It is also alleged in the said FIR that his daughter required residential permit and the permission was being extended from time to time. That the said work was being done by accused No.1-Suryakant Tailor who is shown as ASI at Pardi police station. It is further stated in it that in past the said officer used to obtain appropriate endorsement showing that she was permitted to stay in India for the period indicated in the endorsement. It is also stated that lastly when the said endorsement was required to be obtained on the said permission, the first accused had told him that he would be able to get the work done. The said informant used to contact the said accused time and again and ultimately the residential permit was given to the said informant stating that extension application till 23.12.2000 received in the office was under consideration.

4. The said informant alleged therein that in fact the office was required to state on the permission that 'permitted to stay in India upto a particular date.' That instead, the aforesaid endorsement was made on the permit and, therefore, he had some doubt in the work done by the first accused. The said informant has further stated in the FIR that the further work was required to be done by the present petitioner and that the first accused had agreed to get it done through the present petitioner. It is further stated in the FIR that the first accused has demanded Rs. 2000/for being paid to the present petitioner stating that the present petitioner had demanded the said amount of Rs.2000/- from the first accused for getting the said endorsement done on the said permit. Therefore the said FIR was filed by the said informant. On the aforesaid FIR investigation was

undertaken and at the close of the investigation, charge sheet was filed and it was registered before appropriate court.

5. The petitioner, being the second accused in the said FIR, has brought this petition stating that there is no material collected during the course of investigation against the petitioner and therefore, when there is no material collected and no case is made out, the petition be allowed and the aforesaid FIR which has been culminated in the charge sheet may be ordered to be quashed and set aside and the present petitioner be set at liberty.

6. On receiving the petition, Rule was issued and Mr M A Bukhari, learned APP appeared for the respondents and waived service of notice of rule on behalf of the respondents.

I have heard the learned advocates for the parties and have perused the papers. In fact, the learned Advocate for the petitioner and the learned APP both have taken me through the Records and Proceedings connected with the FIR and charge sheet. On going through the materials on record and considering the arguments advanced by the learned Advocate for the petitioner, it is apparently clear that the said informant Dhansukhlal Patel had never met the present petitioner and there was absolutely no talk between them at any point of time. Therefore, there is no material on record to show that the present petitioner had demanded any money or any illegal gratification from the said informant either personally or through the first accused at any point of time.

7. The only averment found on the records is that the first accused Suryakant Tailor had demanded the said amount of Rs. 2000/- from the said informant showing that the present petitioner had demanded the said amount of Rs.2000/- and, therefore, the said amount was required to be paid to the present petitioner. The records do not show that any trap was laid and the petitioner was caught receiving any amount either from the petitioner or from the first accused.

8. In fact the records do not disclose any activity of the present petitioner and the only relevant material is statement of the first accused as stated above against the present petitioner.

9. In other words, nothing except the oral words of

the first accused is found against the present petitioner. The first accused in the said FIR is after all shown as co-accused in FIR and charge sheet. It is well settled that statement of co-accused involving someone else cannot be treated as evidence against the said person and said to be involved in the offence. In the present matter, we find that the first accused has tried to involve the present petitioner as aforesaid but except his statement as aforesaid, there is no material on record connecting the present petitioner with the crime in question. As said above, the statement of co-accused cannot be treated to be an evidence against the petitioner. Therefore, the said statement of co-accused i.e. the involvement of the present petitioner has to be excluded from our consideration.

10. Once the statement of the co-accused is taken out of consideration, then there is absolutely no other material on record to show that the present petititioner had ever demanded the aforesaid amount of Rs.2000/- or any other illegal gratification from the said informant either personally or through the first accused. When there is no material against the present petitioner even at the end of the investigation, there is no reason as to why the present petitioner should face trial before the trial court. Mr M A Bukhari, learned APP was also required to address the court and even during the course of his lengthy arguments, he was not in a position to point out any material except the statement of co-accused, showing involvement of the present petitioner in the present offence. This clearly shows that except the statement of the co-accused, there is absolutely no material against the petitioner showing his involvement in the offence in question.

11. In view of the aforesaid, when there is no material against the present petitioner even at the end of the investigation, this petition is required to be allowed and the proceedings against the petitioner are required to be quashed as there will be no fun in prosecuting the petitioner before the trial court.

12. For the foregoing reasons, this petition is allowed. The FIR being C.R. No.287/2000 of Valsad City Police Station in Valsad District resulting in charge sheet No.221/2000 dated 10.12.2000 are ordered to be quashed and set aside. The petitioner shall not be prosecuted before any court in respect of the aforesaid offence arising out of the aforesaid FIR resulting in the aforesaid charge sheet.

Rule is made absolute to the extent indicated above.

Date:15.1.2003 [D P Buch, J.]
msp